



MEMO ENDORSED

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VIA ECF

April 2, 2024

Hon. Jessica G. L. Clarke
United States District Court, Southern District of New York
500 Pearl Street, Room 1040
New York, New York 10007

Re: McKenzie-Morris v. V.P. Records Retail Outlet, Inc. et al, 1-22-cv-01138

Dear Judge Clarke:

We represent the defendants in this action (“Defendants”) and submit this letter for two reasons: (1) to request that the April 8, 2024 date to submit a post-discovery joint status letter be continued until after Defendants’ pending motion for partial summary judgment is resolved, and (2) to raise the potential addition of counterclaims based on Plaintiff sending takedown notices to Spotify that resulted in Spotify removing access to VP Music Group, Inc.-owned sound recordings based on Plaintiff’s assertion that she owns the copyright to such sound recordings, *which claim is directly contrary to Judge Woods’ ruling dismissing Plaintiff’s copyright infringement claim* [DE 123].

(1) **Defendants’ request to continue the April 8, 2024 due date to submit a joint status letter:**

Defendants filed a motion for partial summary judgment that, if granted, will substantially narrow the scope of the lawsuit. Defendants respectfully submit that the ability of the parties to have meaningful settlement discussions between themselves and/or before a Magistrate Judge (or private mediator) is not feasible until after the motion is resolved. Further, while Defendants

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believe the motion should be granted in its entirety, if that does not happen, the parties would almost certainly seek additional discovery.¹

(2) **Plaintiff's Takedown Notices to Spotify:**

In late March, Spotify advised VP that it removed access to eleven sound recordings in response to takedown notices Plaintiff sent to Spotify under the Digital Millenium Copyright Act ("DMCA"). Plaintiff's takedown notices asserted that "all rights" in the master sound recordings for these titles "belong to Shauna McKenzie."

Under the DMCA, a person sending a "takedown" notice to an internet service provider (such as Spotify) must, among other things, assert copyright ownership rights in or to the material that is the subject of the takedown notice. While Plaintiff purported to do this in her takedown notices, her assertion that "all rights" in the master sound recording "belong to [Plaintiff]" *cannot be reconciled with Judge Woods' August 2023 ruling dismissing her copyright claim in its entirety* [see DE 123 at 13-17]. Moreover, because Plaintiff knew the Court had dismissed her copyright claim, her takedown notices subject her to liability under 17 U.S.C. § 512(f) of the DMCA. Section 512(f) provides that any person who knowingly includes in his or her takedown notice material misrepresentations that material or activity is infringing "shall be liable for any damages, including costs and attorneys' fees incurred by the alleged infringer . . .".²

For the foregoing reasons, Defendants respectfully request that the Court schedule a conference with respect to V.P. Music Group, Inc.'s potential counterclaim under 17 U.S.C. § 512(f).

Respectfully submitted,

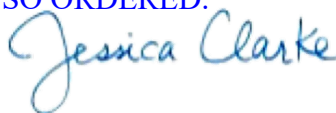


Alan R. Friedman

cc: Counsel and Plaintiff (via ECF)

Application GRANTED. The April 8, 2024 due date for the post-discovery joint status letter is adjourned *sine die*. The parties shall be prepared to discuss V.P. Music Group, Inc.'s potential counterclaim at the April 18, 2024 conference. The Clerk of Court is directed to terminate ECF No. 213.

SO ORDERED.



JESSICA G. L. CLARKE
United States District Judge

Dated: April 4, 2024
New York, New York

¹ If the Court adjourns the April 8, 2024 due date, Defendants suggest that the Court also adjourn the currently scheduled April 18, 2024, Case Management Conference.

² Plaintiff's takedown notices included nine of the ten sound recordings that were the subject of her dismissed copyright infringement claim. Plaintiff's takedown notices referenced two other titles. Not only does V.P. Music Group, Inc. own the master sound recordings for these titles, but also Plaintiff did not claim to own them in her unsuccessful copyright claim.